

CHAPTER 153 Disadvantaged and Minority Business Enterprises

153.01	Policy statement and objectives.	153.08	Counting MBE participation.
153.02	Definitions of terms.	153.09	Counting DBE participation.
153.03	Duties of the MBE Officer	153.10	Waiver of bond.
153.04	MBE eligibility and certification.	153.11	Nondiscrimination by contractors.
153.05	DBE eligibility and certification.	153.12	Time requirements and procedure for noncompliance.
153.06	Required steps in evaluating MBE and DDE applications.	153.13	Third party complaints.
153.06	applications.	153.99	Penalty.
153.07	Contracting goals.		

153.01 POLICY STATEMENT AND OBJECTIVES.

(a) It is the policy of the City of Springfield, Ohio, that Disadvantaged Business Enterprises and Minority Business Enterprises, as defined in Section 153.02, shall have the maximum practical opportunity to participate in the performance of contracts let by the City. In this regard, the City and its contractors are required to comply with both the letter and spirit of this chapter, as well as with the authority as defined by United States Department of Transportation, 49 CFR Part 23, Title VI of the Civil Rights Act of 1964, Executive Order 11625, October 13, 1971, Executive Order 11246, and other laws applicable to providing contracting opportunities to Disadvantaged Business Enterprises and Minority Business Enterprises.

(b) The objectives which the City establishes for the Disadvantaged and Minority Business Enterprises Program are:

- (1) To ensure that Disadvantaged Business Enterprises and Minority Business Enterprises have maximum opportunity to participate in all City contracts;
- (2) To encourage all City contractors to make conscientious efforts, consistent with sound procurement practices and applicable law, to afford Disadvantaged Business Enterprises and Minority Business Enterprises a fair opportunity in their subcontracting or supplying processes;
- (3) To prohibit City contractors from discriminating against potential subcontractors and potential suppliers because such potential subcontractor or potential supplier is a minority or a disadvantaged

business.
(Ord. 94-106. Passed 4-5-94.)

(c) Private corporations, firms, or persons receiving tax abatement or tax credit development incentives from the City shall award their construction and purchase contracts consistent with the objectives set forth in this section.
(Ord. 94-106. Passed 4-5-94.)

153.02 DEFINITIONS OF TERMS.

As used in this chapter, the following words, phrases and terms shall be defined as set forth as follows:

- (a) "Asian-Indian Americans" includes persons whose origins are from India, Pakistan, Sri-Lanka and Bangladesh.
- (b) "Asian-Pacific Americans" includes persons whose origins are from Japan, China, Taiwan, Korea, Vietman, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas.
- (c) "Bid" or "bidder" also includes the terms "proposal" and "proposer".
- (d) "Black Americans" includes persons having origins in any of the black racial groups of Africa.
- (e) "City" means the City of Springfield, Ohio.
- (f) "City Manager" means the City Manager of the City of Springfield, Ohio.
- (g) "Contract" means a binding agreement executed on or after the effective date of this chapter whereby the City is committed to expend or does expend its funds or other resources for or in connection with the following purposes:
 - (1) Construction of any public improvements;
 - (2) Purchase of any personal property;
 - (3) Purchase of any services;
 - (4) Lease of any personal property; or
 - (5) Concession agreements whereby the City grants a specific permission, privilege or license.
- (h) "Contractor" means a party who participates, at any level, in a contract as defined in subsection (g) hereof.
- (i) "Disadvantaged Business Enterprises" (hereinafter referred to as "DBE") means a small business concern:
 - (1) Which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (j) "Discriminate" means to exclude an individual or group solely on the basis of race, religion, color, sex, national origin, age, handicap, ancestry or Vietnam-era or disabled veteran status.
- (k) "Hispanic Americans" includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- (l) "Joint venture" means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine

- their property, capital, efforts, skills and knowledge.
- (m) "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the recipient or contractor.
 - (n) "Minority Business Officer" or "MBE Officer" means the person designated by the City's Director of Human Relations to administer this chapter. The Minority Business Officer shall also serve as the City's "DBE Liaison Officer" and shall perform the duties of such office as described in 49 CFR Section 23.45.
 - (o) "Minority" means a United States citizen or lawful, permanent resident who is:
 - (1) Black American.
 - (2) Hispanic American.
 - (3) Native American.
 - (4) Asian-Pacific American.
 - (5) Asian-Indian American.
 - (p) "Minority Business Enterprise", (hereinafter referred to as "MBE") means a business concern which is at least fifty-one percent (51%) owned by one or more minorities or females, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the stock is owned by minorities or females; whose management and daily business operations are controlled by one or more such minority or female individuals; and that at least fifty-one percent (51%) of the net profits or losses attributable to that business enterprise accrues to minority or female persons.
 - (q) "Native Americans" includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
 - (r) "Regular dealer" means a firm that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this chapter.
 - (s) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$14 million over the previous three fiscal years.
 - (t) "Socially and economically disadvantaged individuals" (hereinafter referred to as "disadvantaged individuals") means those individuals who are citizens of the United States or lawfully admitted permanent residents, and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.
 - (u) "Subcontractor" means one who has contracted with the original contractor

for the performance of all or a part of the work or services which such original contractor has contracted to perform. The purchase of materials and/or equipment by a contractor or a subcontractor for the performing of the work or services of its contract shall not be defined as subcontracting.

- (v) "HUD" means the United States Department of Housing and Urban Development.
- (w) "UMTA" means the United States Urban Mass Transportation Administration.
- (x) "DOT" means the United States Department of Transportation.
- (y) "FAA" means the Federal Aviation Administration.
(Ord. 90-478. Passed 8-28-90.)

153.03 DUTIES OF THE MBE OFFICER.

In addition to those duties specified in other sections of this chapter, the MBE Officer and such other employees as are necessary shall implement and enforce this chapter in accordance with the duties listed hereunder. The duties of the MBE Officer shall include, but not be limited to:

- (a) Developing, monitoring implementation of and providing continuing evaluation of the City's MBE/DBE Program.
- (b) The MBE Officer shall be responsible for the administration of this chapter and shall, consistent with the terms and policies of this chapter, provide such assistance as is necessary and appropriate to help contractors comply with the provisions of this chapter. In the event the MBE Officer has reason to believe that a contractor is not in compliance with this ordinance, the MBE Officer shall communicate such concerns to the City Manager and obtain the advice and instructions from the City Manager prior to proceeding with any corrective actions or actions to enforce the provisions of this chapter.
(Ord. 94-106. Passed 4-5-94.)
- (c) Reviewing all submittals and other information supplied and required by Sections 153.04 and 153.05 of this chapter and other applicable Federal requirements to determine whether individual contractors have been certified or are certifiable as MBE's and/or DBE's.
- (d) Compile and maintain a directory identifying MBE's and DBE's by name, address and other designations deemed appropriate by the MBE Officer. Each such business enterprise shall be classified in the directory as a MBE and/or DBE. The directory shall be updated at least annually and shall be made available in the office of the MBE Officer for review by bidders.
- (e) Assisting in securing management and technical assistance resources for MBE's and DBE's.
- (f) Publicizing business opportunities with the City suitable for MBE or DBE participation including, but not limited to, those involving the use of funds provided by HUD, UMTA, DOT and FAA.
- (g) Assisting MBE's and DBE's in locating resources to aid in bidding on City contracts and subcontracts by planning and/or participating in training sessions, workshops, seminars, etc. This assistance includes pre-bid and pre-construction meetings to explain MBE/DBE requirements.
- (h) Monitoring the subcontracting practices of contractors to ensure continued compliance with this chapter.
- (i) Receiving and reviewing all rules and regulations issued by the State of

Ohio or the Federal government relevant to contract compliance, and assuring that the City is conforming to those rules and regulations applicable to the City.

- (j) Investigating complaints of discrimination against MBE's and DBE's by City contractors.
(Ord. 90-478. Passed 8-28-90.)

153.04 MBE ELIGIBILITY AND CERTIFICATION.

(a) Each business, including the MBE partner in a joint venture, wishing to participate in City contracts as a MBE shall complete and submit a MBE application. Each entity wishing to participate as a joint venture MBE shall in addition complete and submit a MBE joint venture application. The applications shall be signed by the authorized representative of the business entity and shall be sworn to before a notary public. A business seeking certification as an MBE shall submit the required application with its bid.

(b) The MBE Officer shall apply the following standards in determining whether a business enterprise qualifies for MBE status:

- (1) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community.
- (2) An eligible MBE under this part shall be an independent business. The ownership and control by minorities shall be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by a examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE. In determining whether a potential MBE is an independent business, the MBE Officer shall consider the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with nonminority firms vary from industry practice.
- (3) The minority owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority. There shall be no restrictions through, for example, bylaw provisions, partnership agreements or requirements in articles of incorporation for cumulative voting rights or otherwise that prevent the minority owners, without the cooperation or vote of any owner who is not a minority, from making a business decision of the firm.
- (4) If the owners of the firm who are not minorities are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities and shall not be considered

an MBE within the meaning of this chapter. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this part, be considered as controlling the business.

- (5) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as a MBE under this part shall be held directly by minorities. No securities held in trust, or by any guardian for a minor, shall be considered as held by a minority in determining the ownership or control of a corporation.
- (6) The contributions of capital or expertise by the minority owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minorities, or the mere participation as an employee, rather than as a manager.
- (7) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract shall be reviewed to determine the reasons for the timing of the formation of or change in the firm.
- (8) A previous and/or continuing employer-employee relationship between or among present owners shall be reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.
- (9) Any relationship between an MBE and a business which is not an MBE which has an interest in the MBE shall be reviewed to determine if the interest of the non-MBE conflicts with the ownership and control requirements of this section.

(c) A joint venture is eligible under this section if the MBE partner of the joint venture meets the standards for an eligible MBE set forth above and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture.

(d) A business wishing to be certified as an MBE or joint venture MBE shall provide such additional information to the City as the MBE Officer shall request.

(e) If after reviewing the above data, the MBE Officer determines that the applying business enterprise is a bona fide MBE, he shall certify the business enterprise as a MBE firm and issue a MBE certification number to the firm. The certification shall be effective as long as the information in the relevant MBE application continues to be true, but no longer than for a period of twelve months.

(f) Once certified, an MBE shall update its MBE application annually. If at any time there is a change in ownership or control of the firm, the MBE shall submit a new MBE application.
(Ord. 90-478. Passed 8-28-90.)

153.05 DBE ELIGIBILITY AND CERTIFICATION.

- (a) Each business, including the DBE partner in a joint venture, wishing to

participate as a DBE shall complete and submit a DBE application. Each entity wishing to participate as a joint venture DBE shall in addition complete and submit a DBE joint venture application. The applications shall be signed by the authorized representative of the business entity and shall be sworn to before a notary public. A business seeking certification as an DBE shall submit the required application with its bid.

(b) The MBE Officer shall apply the following standards in determining whether a business enterprise qualifies for DBE status:

- (1) Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community.
- (2) An eligible DBE under this part shall be an independent business and shall be a small business concern. The ownership and control by disadvantaged individuals shall be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The disadvantaged individuals shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an DBE. In determining whether a potential DBE is an independent business, the MBE Officer shall consider the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with nondisadvantaged individual firms vary from industry practice.
- (3) The disadvantaged individuals who are owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the disadvantaged individual. There shall be no restrictions through, for example, bylaw provisions, partnership agreements or requirements of the articles of incorporation for cumulative voting rights or otherwise that prevent disadvantaged individuals, without the cooperation or vote of any owner who is not a disadvantaged individual, from making a business decision of the firm.
- (4) If the owners of the firm who are not disadvantaged individuals are disproportionately responsible for the operation of the firm, then the firm is not controlled by disadvantaged individuals and shall not be considered a DBE within the meaning of this chapter. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purpose of this part, be considered as controlling the business.

- (5) All securities which constitute ownership and/or control of a corporation for purposes of establishing it as an DBE under this part shall be held directly by disadvantaged individuals. No securities held in trust, or by any guardian for a minor, shall be considered as held by a disadvantaged individual in determining the ownership or control of a corporation.
- (6) The contributions of capital or expertise by the disadvantaged individual owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.
- (7) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract shall be reviewed to determine the reasons for the timing of the formation of or change in the firm.
- (8) A previous and/or continuing employer-employee relationship between or among present owners shall be reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.
- (9) Any relationship between an DBE and a business which is not an DBE which has an interest in the DBE shall be reviewed to determine if the interest of the non-DBE conflicts with the ownership and control requirements of this section.

(c) A joint venture is eligible under this section if the DBE partner of the joint venture meets the standards for an eligible DBE set forth above and the DBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture.

(d) A business wishing to be certified as an DBE or joint venture DBE shall provide such additional information to the City as the MBE Officer shall request.

(e) If after reviewing the above data, the MBE Officer determines that the applying business enterprise is a bona fide DBE, he shall certify the business enterprise as a DBE firm and issue a DBE certification number to the firm. The certification shall be effective as long as the information in the relevant DBE application continues to be true, but no longer than for a period of twelve months.

(f) Once certified, a DBE shall update its DBE application annually. If at any time there is a change in ownership or control of the firm, the DBE shall submit a new DBE application.

(Ord. 90-478. Passed 8-28-90.)

153.06 REQUIRED STEPS IN EVALUATING MBE AND DBE APPLICATIONS.

The MBE Officer shall take the following steps in evaluating each MBE and DBE application. The MBE Officer shall also perform such additional investigation as the MBE Officer deems necessary to thoroughly and fairly evaluate each MBE and

DBE application. At a minimum, the MBE Officer shall:

- (a) Perform an on-site visit to the offices of the applicant firm and to any job sites on which the applicant firm is working at the time of the eligibility investigation.
- (b) Obtain the resumes or work histories of the principal owners of the applicant firm and personally interview such individuals.
- (c) Analyze the ownership of stock in the applicant firm, if it is a corporation.
- (d) Analyze the bonding and financial capacity of the applicant firm.
- (e) Determine the work history of the applicant firm, including contracts it has received and work it has completed.
- (f) Obtain or compile a list of equipment owned or available to the applicant firm and the licenses of the firm and its key personnel to perform the work it seeks to do in participating in the MBE/DBE Program.
- (g) Obtain a statement from the applicant firm of the type of work it prefers to perform as part of the MBE/DBE Program.
(Ord. 90-478. Passed 8-28-90.)

153.07 CONTRACTING GOALS.

(a) The following over all annual goals are established for MBE and DBE participation in contracts awarded by the City:

- (1) Eighteen percent (18%) MBE participation in City contracts funded by HUD.
- (2) Fourteen percent (14%) DBE participation in City contracts funded by DOT and FAA.
- (3) Fourteen percent (14%) DBE participation in City contracts funded by UMTA.

(b) The City Manager shall establish an individual contract goal for each prime contract with subcontracting possibilities which will be funded by HUD, DOT, FAA or UMTA. The City Manager shall consider the known availability of qualified MBE's and DBE's in establishing each individual contract goal.

(c) Each contractor who is awarded a contract, which will be funded by HUD, DOT, FAA or UMTA, shall use its best efforts to meet the individual contract goal established by the City Manager for the contract awarded.

(d) Contractors shall, at a minimum, seek DBE's and MBE's in the same geographic area in which they seek subcontractors generally for a given solicitation. If the contractor cannot meet the goals using DBE's and MBE's from this geographic area, the contractor, as part of its efforts to meet the goal, shall expand its search to a reasonable wider geographic area.

(e) Bidders submitting a bid for any contract shall disclose to the MBE Officer, in writing, the names and addresses of each DBE and MBE firm that will participate in the contract, if awarded to the bidder, a description of the work each named DBE and MBE will perform, and the dollar amount of participation in the contract by each named DBE and MBE. Such disclosure shall be made to the MBE Officer prior to award of the contract by the City Commission.

(f) Contractors shall make good faith efforts to replace a MBE subcontractor that is unable to perform successfully with another MBE and replace a DBE subcontractor that is unable to perform successfully with another DBE.

(g) Requests for bids published by the City in connection with projects funded by HUD, DOT, FAA and UMTA shall inform competitors of the information which must be submitted by competitors to demonstrate their ability to comply with MBE/DBE requirements of the City and shall state that compliance with such requirements is a precondition of an award of contract.

(h) The City Manager shall have discretion to decide whether each contractor has exercised its best efforts to meet the individual contract goal. In deciding whether a contractor has exercised its best efforts, the City Manager shall consider the following:

- (1) Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBE's and MBE's of contracting and subcontracting opportunities.
- (2) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities.
- (3) Whether the contractor provided written notice to a reasonable number of specific DBE's and MBE's enabling the DBE's or MBE's to participate effectively.
- (4) Whether the contractor followed up initial solicitations of interest by contacting DBE's and MBE's to determine with certainty whether the DBE's and MBE's were interested.
- (5) Whether the contractor selected portions of the work to be performed by DBE's and MBE's in order to increase the likelihood of meeting the DBE and MBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE and MBE participation).
- (6) Whether the contractor provided interested DBE's and MBE's with adequate information about the plans, specifications and requirements of the contract.
- (7) Whether the contractor negotiated in good faith with interested DBE's and MBE's, not rejecting DBE's and MBE's as unqualified without sound reasons based on a thorough investigation of their capabilities.
- (8) Whether the contractor made efforts to assist interested DBE's and MBE's in obtaining bonding, lines of credit or insurance required by the City and contractor.
- (9) Whether the contractor effectively used the services of available minority community organizations; minority contractors' groups; local, State and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's and MBE's.
- (10) Whether the contractor has provided documents and information which the MBE Officer has required the contractor to provide to the City.

(i) If the City Manager decides that a contract awardee has not exercised

good faith to meet the contractor's individual contract goal, the City Manager shall recommend to the City Commission that the award of contract to such contractor be revoked.

(Ord. 90-478. Passed 8-28-90.)

153.08 COUNTING MBE PARTICIPATION.

MBE participation shall be counted toward meeting MBE goals set in accordance with this chapter as follows:

- (a) Once a firm is determined to be an eligible MBE in accordance with this chapter, the total dollar value of the contract awarded to the MBE is counted toward the applicable MBE goals.
- (b) The total dollars value of a contract to an MBE owned and controlled by minorities is counted toward the goals for minorities in proportion to the percentage of ownership and control of each group in the business.
- (c) A contractor may count toward its MBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this chapter equal to the percentage of the ownership and controls of the MBE partner in the joint venture.
- (d)
 - (1) A contractor may count toward its MBE goals only expenditures to MBEs that perform a commercially useful function in the work of a contract. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE is performing a commercially useful function, the MBE Officer shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
 - (2) Consistent with normal industry practices, a MBE may enter into subcontracts. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE shall be presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption to the MBE Officer.
- (e) A contractor may count toward its MBE goal sixty percent (60%) of its expenditures for materials and supplies required under a contract and obtained from an MBE regular dealer, and one hundred percent (100%) of such expenditures to an MBE manufacturer.
- (f) A contractor may count toward its MBE goals the following expenditures to MBE firms that are not manufacturers or regular dealers:
 - (1) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- (2) The fees charged for delivery of materials and supplies required on a job site, but not the cost of the materials and supplies themselves, when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
(Ord. 90-478. Passed 8-28-90.)

153.09 COUNTING DBE PARTICIPATION.

DBE participation shall be counted toward meeting DBE goals set in accordance with this chapter as follows:

- (a) Once a firm is determined to be an eligible DBE in accordance with this chapter, the total dollar value of the contract awarded to the DBE is counted toward the applicable DBE goals.
- (b) The total dollars value of a contract to an DBE owned and controlled by disadvantaged individuals is counted toward the DBE goals for disadvantaged individuals in proportion to the percentage of ownership and control of each group in the business.
- (c) A contractor may count toward its DBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this chapter equal to the percentage of the ownership and controls of the DBE partner in the joint venture.
- (d)
 - (1) A contractor may count toward its DBE goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. An DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an DBE is performing a commercially useful function, the MBE Officer shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
 - (2) Consistent with normal industry practices, a DBE may enter into subcontracts. If an DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the MBE Officer.
- (e) A contractor may count toward its DBE goal sixty percent (60%) of its expenditures for materials and supplies required under a contract and obtained from an DBE regular dealer, and one hundred percent (100%) of such expenditures to an DBE manufacturer.

(f) A contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (2) The fees charged for delivery of materials and supplies required on a job site, but not the cost of the materials and supplies themselves, when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (Ord. 90-478. Passed 8-28-90.)

153.10 WAIVER OF BOND.

(a) The MBE Officer, with input from the Purchasing Agent, may suggest to the City Manager, and the City Manager may determine to exempt MBEs or DBEs from posting bid bonds with their bids and performance bonds with the execution of contracts upon a finding that one or more of the following exist:

- (1) The contract is for the purchase of goods, services or construction which is consistent with the bidder's capabilities to perform.
- (2) Such waiver does not conflict with compliance of Federal Wages and Hour Act, the Davis Bacon Act or other Federal procedures.
- (3) The bidder has a prior record of performance which may be used to determine the bidder's ability to perform.

(b) Nothing contained in this section shall be construed to restrict the applicability of State prevailing wage requirements or to exempt transactions therefrom to the extent that such requirements would otherwise apply and be enforceable.

(Ord. 90-478. Passed 8-28-90.)

153.11 NONDISCRIMINATION BY CONTRACTORS.

(a) The goals referred to in Section 153.01 are established to encourage affirmative action by all parties who participate in contracts with the City and apply to all contractors and subcontractors.

(b) No contractor shall discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, handicap, ancestry or Vietnam-era or disabled veteran status. Contractors shall take such affirmative action as is required by law to ensure that applicants are employed and that

employees are treated during employment without regard to race, religion, color, sex, national origin, age, handicap, ancestry or Vietnam-era or disabled veteran status. As used herein, "treated" means and includes without limitation the following: recruited whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, transferred, laid off and terminated. Contractors shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of contractors setting forth the provisions of this nondiscrimination clause.

(c) Any person who intentionally misrepresents himself/herself as owning, controlling, operating or participating in a MBE or DBE for the purpose of obtaining contracts, subcontracts, or any other benefits under this chapter shall be guilty of theft by deception as provided in Ohio R.C. 2913.02.
(Ord. 90-478. Passed 8-28-90.)

153.12 TIME REQUIREMENTS AND PROCEDURE FOR NONCOMPLIANCE.

(a) Whenever the MBE Officer determines a contractor to be in violation of a provision of this chapter, he shall issue a written finding setting forth such determination and the basis of his decision, together with notice to the contractor of the right to object to the finding. Such written finding shall be served upon the contractor by certified mail at such contractor's last known address. Any contractor taking exception to a finding of the MBE Officer first shall attempt to reconcile the situation with the MBE Officer. A good faith attempt to achieve informal reconciliation is a prerequisite to the contractor filing a written objection with the City Manager.

(b) If, after attempting to reconcile the violation by informal means, the situation is not alleviated, a contractor may file a written objection with the City Manager within fifteen days of the receipt by the contractor of the MBE Officer's written finding. Thereupon, the MBE Officer shall, within seven days, forward to the City Manager all materials relating to the determination which is appealed, together with recommendations of appropriate remedial action to be taken. The contractor may file a request for a hearing before the City Manager when filing the written objection.

(c) If the MBE Officer finds a contractor to be in violation of this chapter and no reconciliation is attempted by the contractor within fifteen days of the receipt by the contractor of the written finding, the MBE Officer shall forthwith forward his finding to the City Manager along with any recommendation of appropriate remedial action to be taken.

(d) Under the direction of and upon authorization from the City Manager, the MBE Officer shall determine when a violation of this section exists and when the attempts at reconciliation taken by the contractor will not reasonably alleviate the situation.

(e) If the contractor objects to the decision of the City Manager, the contractor must next pursue the appeal process set forth in 49 CFR Section 23.55.
(Ord. 90-478. Passed 8-28-90.)

153.13 THIRD PARTY COMPLAINTS.

Any person or organization with information indicating unjust participation by an enterprise or individuals under this program, or who believes that the DBE and MBE participation is being improperly applied, should file a written complaint with the City Manager which shall contain a detailed statement in writing of the basis of the complaint.

(Ord. 90-478. Passed 8-28-90.)

153.99 PENALTY.

Whoever violates any provision of this chapter for which another penalty is not specifically provided shall be guilty of a misdemeanor of the fourth degree, punishable by a fine of not more than two hundred fifty dollars (\$250.00) or by imprisonment not exceeding thirty days or both.

(Ord. 90-478. Passed 8-28-90.)